IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1)GAYAD SINGH VERSUS STATE OF RAJASTHAN
S.B.CR. APPEAL NO.874/2006
(2)SMT.TEJI BAI VERSUS STATE OF RAJASTHAN
S.B.CR.APPEAL NO.875/06
(3)RADHEYSHYAM SINGH VERSUS STATE OF RAJASTHAN
S.B.CR.APPEAL NO.876/2006

Under Section 449 Cr.P.C. against the Judgment dated 12.7.2006 in criminal misc. case No.79/2006 arisen out of Sessions Case No.83/2006 (old No.262/2005), passed by Sh. Narendra Singh Dadha, RHJS, Additional Sessions Judge (Fast Track)No.1, Udaipur

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Date of Judgement :- April 16 , 2007

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. Deepak Manaria, counsel for the appellants.
Mr.JPS Choudhary, Public .Prosecutor.

BY THE COURT:

1. These appeal is directed against the common judgment and order dated 12.7.2006 passed by the Additional Sessions Judge (Fast Track) No.1 Udaipur, whereby he refused to drop the proceedings under Section 446 Cr.P.C. against the appellant Gayad Singh and ordered to recover Rs.5000/, Rs.5000/- (total

Rs.10,000/-) respectively i.e. half of the amount of surety bonds from the appellant Gayad Singh and half of the amount of personal bond from Smt. Teji Bai Rs.5,000/- and from Radhey Shyam Singh Rs.10,000/-.

2. The prosecution story is woven like this:-

(i) Appellant Gayad Singh stood himself as surety to accused appellants Radheyshyam Singh and Smt. Teji who were facing trail before the learned Additional Sessions Judge (Fast Track) No.1, Udaipur.

(ii)After grant of bail, accused appellants Radhey Shaym and Smt. Teji did not appear before the learned Additional Sessions Judge (Fast Track) No.1 Udaipur because they went to Gujarat for earning their livelihood. Due to non-appearance of Radhey Shyam Singh and Smt. Teji, the learned Addl.Sessions Judge forfeited the bail bonds and ordered for initiating proceedings under Section 446 Cr.P.C.

(iii)That, thereafter on 12.7.2006 accused Radhey Shyam and Smt.Teji Bai surrendered before the learned trial Court and moved application under Section 446(3) for dropping the proceedings initiated against them and stated that they went to Gujarat for earning their livelihood.

(iv)The learned trial Court partly allowed the application and ordered that half of the amount of surety bonds of appellant

Gayad Singh i.e. 5000/- and 5000/- as penalty and for recovery of half of the amount of the personal bond of Rs.10,000/- of Smt. Teji and Rs.20,000/- of Radhey Shyam Singh.Hence, this appeal for quashing the order of the learned trail Court.

3. Heard the learned counsel for the appellants and the learned Public Prosecutor and perused the impugned order of the learned trial Court as well as record of the case .

4. Learned counsel for the appellants states that appellant Radhyshyam Singh and Smt. Teji Bai went to Gujarat and that's why they could not attend the Court on the hearing dated 18.10.2005 so,proceedings under Section 446 Cr.P.C. was initiated and after applying Section 446(3) Cr.P.C for dropping the proceedings against the appellants, the learned trial Judge vide order dated 12.7.2006 ordered to recovery half of the amount of personal bond Rs.10000/- of Smt. Teji Bai and Rs.20,000/- of Radhey Shayam Singh. Likewise appellant Gayad Singh being the surety in both the appellants – Radheyshyam Singh and Smt. Teji Bai and on his application under Section 446(3) Cr.P.C. same order has been passed against the appellant surety and ordered to recover Rs.5000/- for the personal bonds ob both the accused appellants (Radhyshyam Singh and Smt. Teji Bai).

5. Learned counsel for the both the accused appellant states that they have already surrendered before the court but on account of personal difficulty and for non appearance for one day, the recovery of amount of the bail bonds is escessive so it should be reduced.

6. Learned Public prosecutor states that it is discretion of the Court so looking to the facts of the case, appropriate order may be passed.

7. Under the provisions of subsection(3) of Section 446 Cr.P.C. Court may at its discretion remit any portion of the penalty, mentioned and enforce payment in part only. In this respect it is immaterial that no doubt that as a surety under takes to produce the accused on all hearing dates of the trial or till the disposal of the case, exposes himself to the penalty of forfeiture for non appearance of the accused. In such matters a rigid adherence or haste in ordering forfeiture is not called for, What the court has to see is if there was any good or sufficient cause for non-appearance of the accused or non production of the accused by the surety on a given date.

8. The penalty should bear some correlation to the

circumstances of the case, nature of the offence, inconvenience caused to the Court and the likelihood of the exertions that the State may have to put in re-apprehending the accused.

9. Judged from this background the order under appeal passed by the Additional Sessions Judge (Fast Track) No.1 Udaipur is not sustainable in the eye of law, because the exercise of discretion is not judiciously ,exercised by the learned trial Court.

10. For the above reasons, I take lenient view and remit penalty under surety of Gayad Singh to the extent of Rs.2500/- and now remaining sum of Rs.2500/- from Gayad Singh shall be recovered as penalty under the surety. Likewise for the bonds of Radhey Shyam Singh and Smt. Teji Bai, I remit penalty to the extent of Rs.5000/- from Radhyshyam Singh and I remit penalty to the extent of Rs.2500/- from Smt. Teji Bai. Now remaining sum of Rs.5000/- and Rs.2500/- respectively shall be recovered from Radhey Shyam Singh andSmt. Teji Bai.

11. The appeals are disposed of as indicated hereinabove.

[CHATRA RAM JAT],J.

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